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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 857

UNITED STATES GYPSUM COMPANY, A CORPORATION,
Petitioner,

vs.

NATIONAL WAR LABOR BOARD, ET AL.,
Respondents.

PETITION FOR REHEARING.

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Attorneys for Petitioner.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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MAY IT PLEASE THE COURT:

Petitioner respectfully asks that the court reconsider its denial of Petitioner's petition for writ of certiorari. Petitioner must continue to insist that the refusal of the court below, now confirmed by denial by this court of certiorari herein, to permit the entry of any sort of a decretal order defining the rights of Petitioner with respect to the Board's order here involved places Petitioner in extreme jeopardy. The effect of the order of the court below is to permit action by Respondents, or at their instance, for the enforcement of the order without remedy to Petitioner until after the action has been had and the damage resulting therefrom has occurred. Neither Petitioner nor its counsel has any power of prophetic foresight so as to foresee or anticipate enforcement action by Respondents, or at their instance, far enough ahead so as to permit further application to this court or to the court below or to the District Court for preventive relief. Sanctions may be imposed pursuant

to Executive Order No. 9370 with or without notice to Petitioner—depending upon the arbitrary determination of the Director of Economic Stabilization. If such sanctions are imposed—and Petitioner has no reason to suppose that they will not be in view of the direction contained in Executive Order No. 9370 by the President to impose such sanctions for noncompliance with an order of the Board—the damage and loss will have ensued and Petitioner will have been irreparably injured without the slightest opportunity to it to have its legal rights determined by the courts in time to prevent such damage, loss, and injury even though the imposition of the sanctions should ultimately be held to be unlawful.

While, as Petitioner has heretofore taken occasion to point out, courts, and this court at times, have held their hand upon the engagement of counsel that the threatened action would not be taken, there is in the instant case no such engagement on the part of Respondents or their counsel, the Department of Justice. The record is plain that notwithstanding the contentions advanced in the instant case in Respondents' motions to dismiss or for summary judgment, their purpose elsewhere than in the halls of justice is persistently to enforce Board orders by executive action.

We respectfully ask the court, among other things, to reconsider the question as to whether Petitioner is not entitled as of right to a declaratory judgment determining Petitioner's rights and liabilities with respect to the Board's order here in question. With all due respect to the court, Petitioner would have supposed that the Declaratory Judgments Act was intended for just such a purpose as is evidenced in the instant case.

Petitioner further asks the court to bear in mind that if the *Ward* case, in which certiorari has also been denied, ultimately comes before this court for decision, the Government may be compelled to take an unequivocable posi-

tion so as to require a specific determination by this court as to the enforcibility of Board orders—even though entered prior to the enactment of the War Labor Disputes Act—whether such enforcement be by judicial process or by executive action. Whatever may be the views expressed in the three opinions of the court below involving Board orders, there is nothing in any order or judgment of the court below, and there will be nothing in any order entered in the District Court pursuant to the mandate of the court below, to preclude Respondents or the Government from taking any other or varying position they please with respect to the enforcibility of Board orders. Had judgment been entered in the instant case, whether by way of injunction or by way of declaratory judgment, declaring the unenforcability of the Board's order here involved, then Petitioner, as to such matter, would not, and could not, we believe, be affected by any radical change of position on the part of Respondents or the Government. In the state of the record as it now stands, however, and unless the judgment of the court below is reversed, Petitioner stands at the mercy of Respondents.

Under the circumstances Petitioner therefore respectfully asks the court to set aside its denial of Petitioner's petition for certiorari and to grant the same.

Respectfully submitted,

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Chicago, Illinois,
Attorneys for Petitioner.

The undersigned, being one of counsel for Petitioner herein, certifies that the foregoing petition for rehearing is presented in good faith and not for delay.

LELAND K. NEEVES.